

Nacchio transfer barred from trial

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Former Qwest Communications International Inc. Chief Executive Officer Joseph Nacchio defeated a government bid to introduce evidence at his insider trading trial of a \$90 million asset transfer to his wife.

Nacchio, 57, is accused of selling \$101 million in Qwest shares in 2001 based on non-public information the company would miss revenue targets. Prosecutors wanted to introduce evidence he transferred assets, including Qwest shares he owned solely or with his wife, entirely to her in 2002. The transfer, the U.S. claimed, refutes Nacchio's argument that he acted in good faith by not selling 90,000 Qwest shares held by his children.

"The jury is being asked to focus on what Mr. Nacchio's state of mind was in May 2001," U.S. District Judge Edward Nottingham ruled Thursday in Denver federal court before the trial, now in its second week, resumed. "The fact that he may have realized in May 2002 that things have changed, that there might be future civil actions, that says very little about his state of mind in 2001."

Nacchio faces a maximum sentence of 10 years in prison and a \$1 million fine on each of 42 counts against him if convicted. Nacchio denies the charges, arguing he believed Denver-based Qwest's public projections were accurate and that he sold the stock because Qwest's directors wouldn't extend options that were due to expire.

The judge said allowing the evidence of the transfer to his wife could let jurors draw the inference that Nacchio is guilty "simply because he is a wealthy man" who "somehow deserves to be punished" for the asset transfer.

Prosecutors have sought to show how hard Nacchio pushed employees to meet revenue targets to satisfy expectations of Wall Street analysts and investors.

James Smith, a former head of Qwest's consumer and small business unit, Thursday told jurors about the pressure he felt when he informed Nacchio his unit wouldn't meet its target.

"These targets went beyond what I called a stretch, and were in fact unattainable," Smith said. He testified that Nacchio's response was "the targets were the targets," and "that I needed to understand that my job was to find a way to produce those results and not suggest why they were an impossibility," Smith said.

Jurors also heard testimony from David Weinstein, a friend of Nacchio and his financial consultant until 2005. Weinstein said Nacchio entered a "blind exercise program" on Feb. 15, 2001, to sell 11,500 shares of Qwest stock every day until June 2003. Weinstein told prosecutors he didn't know why Nacchio stopped the trading plan a few weeks later.

Prosecutors questioned Weinstein, a financial adviser in New Jersey for Ayco Co. LP, about Nacchio's personal finances and transactions to demonstrate a motivation to sell Qwest shares before the stock price plunged. Nacchio's lawyer, Herbert Stern, countered with questions designed to show that Nacchio's actions demonstrated his belief that the company's stock price would rise.